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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

**8:11-cv-00485-AG (AJW)**

**PLAINTIFFS MEMORANDUM  
IN OPPOSITION TO ORLY  
TAITZ'S ANTI-SLAPP and  
RULE 12 MOTION TO DISMISS  
PLAINTIFFS FAC**

Judge: Hon. Andrew J. Guilford

Date: June 17, 2013

Time: 10:00 a.m.

Courtroom: 10D

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1           **I. INTRODUCTION**

2           The Motion of Defendant Orly Taitz (“Taitz”) to strike the First Amended  
3 Complaint (“FAC”) under California’s Anti-SLAPP statute, Code of Civil  
4 Procedure, §425.16, does not raise any issues that were not raised in her prior  
5 Anti-Slapp Motion, which this Court denied as set forth in its June 14, 2011  
6 Minute Order. [Docket No. (“DN”) 227, Plaintiffs’ Request for Judicial Notice, p.  
7 19, *infra*, (“PRJN”) No. 1.] The claims asserted against Taitz in the FAC are the  
8 same that were raised in the original complaint, augmented by Taitz’s subsequent  
9 acts of defamation, invasion of privacy, and disclosure and misuse of improperly  
10 obtained personal data.

11           As noted in the Court’s June 14, 2011, Minute Order, and as discussed  
12 hereinbelow, Taitz has not shown that the acts complained of in the FAC  
13 constitute protected speech or petitioning activity under Section 425.16(e). Also,  
14 Plaintiffs have made a prima facie showing of facts which, if proved, support a  
15 judgment in their favor.

16           A substantial portion of Taitz’ Motion appear to be a Motion to Dismiss  
17 under Fed. R. Civ. Proc 12(b)(6). However, Taitz’ Notice of Motion contains no  
18 notice of a filed under Rule 12(b)(6) motion.

19  
20           **II. CALIFORNIA’S ANTI-SLAPP LAW DOES NOT APPLY TO**  
21 **THE CONDUCT ALLEGED IN THE FAC.**

22           In order for a complaint to be stricken under California’s Anti-SLAPP  
23 statute, Code Civ. Proc., §425.16, two criteria must be met: (i) first, the moving  
24 defendant must establish that the alleged conduct arises from protected speech or  
25 petitioning, as defined in Section 425.16(e), and (ii) only if the first criteria is met,  
26 the plaintiff must fail to make a prima facie showing of a probability of prevailing  
27 on its claim. Unless both of these criteria are met, the Anti-SLAPP motion must  
28

1 be denied. Varian Med. Sys. Inc. v. Delfino, 35 Cal. 4th 180, 192, 106 P.3d 958,  
2 966 (2005); Navellier v. Sletten, 29 Cal. 4th 82, 88, 52 P.3d 703 (2002); PRJN No.  
3 9, p. 4.

4 **A. Taitz's Conduct Alleged in the FAC Does Not Arise from**  
5 **Protected Speech or Petitioning.**

6 Cal. Code of Civ. Proc. §425.16(e) sets forth 4 categories of protected  
7 speech and petitioning subject to the Anti-SLAPP statute: (i) statements made  
8 before a governmental or official proceeding, (ii) statements made in connection  
9 with an issue under consideration or review by a governmental body, (iii)  
10 statements made in a public place or forum in connection with an issue of public  
11 interest, and (iv) conduct in furtherance of the exercise of the constitutional right  
12 of petition or of free speech in connection with a public issue or issue of public  
13 interest. A matter of "public interest" must: (1) pertain to a person or entity in the  
14 public eye; (2) involve conduct that could affect large numbers of people beyond  
15 the direct participants; or (3) involve a topic of widespread public interest.  
16 Commonwealth Energy Corp. v. Investor Data Exch., Inc., 110 Cal. App. 4th 26,  
17 33, 1 Cal. Rptr. 3d 390, 394 (2003).

18 The moving defendant has the burden of showing that the gravamen of the  
19 Plaintiffs' complaint consists of protected free speech or petitioning activity.  
20 When the defendants fail to meet their initial burden, the court must deny the  
21 motion, without the need to consider whether plaintiff has demonstrated a  
22 probability of success. Rouse v. Law Offices of Rory Clark, 465 F. Supp. 2d  
23 1031, 1038 (S.D. Cal. 2006).

24 Moreover, the fact that a complaint makes incidental or collateral reference  
25 to protected activity does not bring that complaint within the scope of the Anti-  
26 SLAPP statute. Rather, the inquiry is whether the gravamen of the cause of the  
27 plaintiff's damages arose from protected activity. Hylton v. Frank E. Rogozienski,  
28 Inc., 177 Cal. App. 4th 1264, 1272, 99 Cal. Rptr. 3d 805, 810 (2009) ["If the core

1 injury-producing conduct upon which the plaintiff's claim is premised does not  
2 rest on protected speech or petitioning activity, collateral or incidental allusions to  
3 protected activity will not trigger application of the anti-SLAPP statute.”];  
4 Martinez v. Metabolife Int'l, Inc., 113 Cal. App. 4th 181, 188, 6 Cal. Rptr. 3d 494,  
5 499 (2003); Select Portfolio Servicing v. Valentino, 875 F. Supp. 2d 975, 988  
6 (N.D. Cal. 2012).

7 Even if an original writing or statement is a protected form of speech under  
8 the Anti-Slapp statute, the republication of that statement that does not further the  
9 petitioning activity is not protected. Thus, even though a pleading filed with the  
10 court is absolutely privileged, the republication of such pleading to non-  
11 participants in the action is not privileged. Silberg v. Anderson, 50 Cal. 3d 205,  
12 219, 786 P.2d 365 (1990). In Cole v. Patricia A. Meyer & Associates, APC, 206  
13 Cal. App. 4th 1095, 1120, 142 Cal. Rptr. 3d 646, 666-67 (2012), the Court held  
14 that while the filing of a complaint containing defamatory statements was  
15 protected, the posting of that complaint on a website was neither subject to the  
16 litigation privilege nor was it protected speech under the Anti-SLAPP statute.

17 Taitz’s activities which were the gravamen of the cause of the Plaintiffs’  
18 injuries, as alleged in the FAC, fall into three general categories: (a) invasion of  
19 privacy - widespread public dissemination, the posting on websites, and the  
20 repeating on radio and media interviews, of the Plaintiffs’ personal, private  
21 information, including social security numbers, home addresses, dates and places  
22 of birth mother’s maiden name, spouses names, information regarding Plaintiff  
23 Philip Berg’s (“Berg’s”) proceedings before the State Bar, and other private and  
24 personal data of no public interest; (b) defamation - slander and libel - the  
25 publication, outside of and unrelated to any petitioning action in this or any other  
26 proceeding, of false and defamatory statements concerning the Plaintiffs; and (c)  
27 Identity Theft - the setting up of false accounts and the giving of false instructions  
28

1 to third parties in the names of Plaintiffs Lisa Liberi (“Liberi”) and Lisa Ostella  
2 (“Ostella”). As discussed below, none of the acts fall within the protections of the  
3 California Anti-SLAPP Statute.

4 **1. The Dissemination of Private Information is Not**  
5 **Protected Speech.**

6 As set forth in the FAC, Taitz and those acting in concert with her or under  
7 her direction repeatedly published personal and private information concerning  
8 Liberi and Ostella on her websites, in widely circulated e-mails, in radio  
9 interviews, and in other public forums. Taitz has not shown that Liberi or Ostella  
10 were public figures, or that their personal information would affect a large number  
11 of persons or was a topic of widespread public interest. Thus, Taitz has not met  
12 her burden of showing that such statements are activity protected by the Anti-  
13 SLAPP statute. *See Paul v. Friedman*, 95 Cal. App. 4th 853, 865, 117 Cal. Rptr.  
14 2d 82, 91 (2002); *Du Charme v. Int’l Bhd. of Elec. Workers, Local 45*, 110 Cal.  
15 App. 4th 107, 118, 1 Cal. Rptr. 3d 501, 510 (2003); *Doe v. Gangland Prods., Inc.*,  
16 802 F. Supp. 2d 1116, 1121 (C.D. Cal. 2011).

17 Likewise, Taitz’s has not shown that her dissemination on her websites, in  
18 public e-mails, etc., of Berg’s State Bar disciplinary proceedings is a matter of  
19 public interest or is in furtherance of her petitioning activity. While Taitz’s  
20 presentation of such information to this Court would be protected activity, her  
21 republication of such information to the public at large is a violation of Berg’s  
22 privacy and is not protected by the Anti-SLAPP statute.

23  
24  
25 **2. Taitz’s Defamation of Liberi and Ostella is Not**  
26 **Activity Protected by the Anti-SLAPP Statute.**

27 The second category of activity alleged against Taitz is her defamation of  
28 Liberi and Ostella in non-judicial forums. Taitz has made false statements that

1 Liberi is a career criminal, a career document forger, and was convicted of identity  
2 theft, real estate fraud, etc. Taitz also has made false statements that Ostella has a  
3 criminal record, that Ostella stole money from Taitz and hijacked Taitz's website.

4 Defamatory statements fall within the pervuew of Section 425.16(e) only if  
5 such statements are made in the furtherance of litigation or the defendant's activity  
6 petitioning the government. Du Charme v. Int'l Bhd. of Elec. Workers, Local 45,  
7 supra, 110 Cal. App. 4th at 114, 1 Cal. Rptr. 3d at 506.

8 Taitz has not shown that her defamatory statements concerning Liberi and  
9 Ostella, not made in furtherance of this litigation, were of public interest or in  
10 furtherance of her petitioning activity. Liberi or Ostella are not public figures or  
11 of any public interest. Liberi is a paralegal engaged by Berg, and Ostella was a  
12 website service provider to Taitz. Neither has taken any action to thrust  
13 themselves into the public consciousness. But for Taitz's own broadcast of the  
14 defamatory statements, Liberi and Ostella would be unknown to the public at  
15 large. Taitz has not shown any public discussion of or interest in either of them.  
16 Nor does the false information Taitz has disseminated about Liberi and Ostella  
17 involve any people beyond the participants in this litigation, or involve any topic  
18 of widespread public interest. See Commonwealth Energy Corp. v. Investor Data  
19 Exch., Inc., supra, 110 Cal. App. 4th at 33, 1 Cal. Rptr. 3d at 394.

20  
21 **3. Taitz's Identity Theft Is Not Protected by the Anti-SLAPP Statute.**

22 As alleged in the FAC, Taitz also has stolen the identities of Liberi and  
23 Ostella, causing them to be harassed by improperly using their social security  
24 numbers and other identifying information to cancel utility services, create  
25 accounts in their names for the purpose of damaging their credit ratings, and so  
26 forth. Taitz has not shown, and cannot show, that such activity constitutes the  
27 promotion of speech in the public interest or petitioning activity. This is merely  
28 the misuse of private information for personal advantage. See Scalzo v. Am. Exp.

1 Co., 185 Cal. App. 4th 91, 100, 109 Cal. Rptr. 3d 638, 645 (2010).

2 **B. PLAINTIFFS HAVE SHOWN A PROBABILITY OF**  
3 **SUCCESS ON THEIR CLAIMS.**

4 As discussed above, Taitz has not met her burden of showing that the acts  
5 complained of in the FAC fall into any of the four categories of protected speech  
6 set forth in Section 425.16(e), which effectively eliminates the need for the Court  
7 to deal with the second prong of its inquiry on Taitz's Anti-SLAPP Motion.

8 Rouse v. Law Offices of Rory Clark, *supra*, 465 F. Supp. 2d at 1038. However,  
9 even if Taitz had met that initial burden, the Plaintiffs have shown a prima facie  
10 case of a probability that they will prevail on their claims.

11 To meet their burden of defeating an Anti-SLAPP Motion, the Plaintiffs  
12 have a low burden. They only have to show a "minimum level of legal sufficiency  
13 and triability" - i.e., a minimum of evidence which, if believed, will support a  
14 judgment in their favor. Peregrine Funding, Inc. v. Sheppard Mullin Richter &  
15 Hampton, LLP, 133 Cal.App.4th 658, 675, 35 Cal.Rptr.3d 31 (2005); Navellier v  
16 Sletten, 29 Cal.4th 82, 95 n.11, 124 Cal.rptr.2d. 530 (2002). In evaluating the  
17 evidence, the Court must accept as true all evidence and inferences favorable to  
18 the plaintiff, and assess defendant's evidence only to determine if it bars plaintiff's  
19 submissions as a matter of law. Metabolife Int'l, Inc. v. Wornick, 264 F.3d 832,  
20 840 (9th Cir. 2001); Browne v. McCain, 611 F. Supp. 2d 1062, 1067-68 (C.D. Cal.  
21 2009); Cole v. Patricia A. Meyer & Associates, APC, 206 Cal. App. 4th 1095,  
22 1105, 142 Cal. Rptr. 3d 646, 654 (2012).

23 There is no substantial difference with respect to the factual allegations  
24 against Taitz between the original complaint and the FAC. Thus, the evidence and  
25 declarations filed by Plaintiffs in opposition to Taitz's prior Anti-SLAPP Motion  
26 (which this Court denied on June 14, 2011) clearly show that the Plaintiffs have  
27 met their burden of establishing a prima facie case against Taitz on the FAC.

28 Also, because Liberi and Ostella are not public figures, they do not have to



1 establish malice in order to defeat Taitz's Anti-SLAPP Motion. Cole v. Patricia  
2 A. Meyer & Associates, APC, *supra*, 206 Cal. App. 4th at 1122, 142 Cal. Rptr. 3d  
3 at 668. However, Taitz's malice (including malice towards Berg) is shown by the  
4 repeated publication and publicizing of the false statements and information  
5 pertaining to Liberi and Ostella. Taitz's numerous repetition and republications of  
6 the defamatory claims. Fisher v. Larsen, 138 Cal.App.3d 62, 640, 188 Cal.rptr.  
7 216 (1982); Rancho La Costa, Inc. v. Superior Court, 106 Cal.App.3d 646, 667,  
8 165 Cal.Rptr.347 (1980); Reader's Digest Ass'n v. Superior Court, 37 Cal.3d 244,  
9 258, 208 Cal.Rptr. 137 (1984).

10 The evidence before this Court also establishes Liberi's and Ostella's claims  
11 against Taitz for the invasion of privacy with respect to the publication and  
12 republication of their private information, of the claims related to identity theft in  
13 using and misusing Liberi's and Ostella's social security and other private  
14 identifying information as well as Liberi's claims for abuse of process and  
15 malicious prosecution with respect to Taitz's false claims to California and New  
16 Mexico law enforcement officials and probation officials in Taitz's unsuccessful  
17 efforts to have Liberi's probation restricted or revoked.

18 In summary, as this Court noted in its June 14, 2011, Order: "Plaintiffs have  
19 made a prima facie showing of facts that would, if proved, support a judgment in  
20 their favor."

21  
22 **III. TAITZ'S ATTACKS ON PLAINTIFFS' CLAIMS ARE WITHOUT MERIT.**

23 The bulk of Taitz's Motion consists of an attack on the legal sufficiency of  
24 Plaintiffs' claims. As discussed below, each of her assertions is without merit.

25 **A. The Court has Subject Matter Jurisdiction of this Action.**

26 Taitz argues, at pages 6-7 of her motion, that this Court lacks jurisdiction  
27 because the Plaintiffs have not established complete diversity of citizenship. This  
28 argument is frivolous. This argument has been raised, and resolved against Taitz,



1 numerous times before, and she has not presented any new evidence that would  
2 justify overturning the prior determinations of the Court.

3 Judge Robreno, in response to previous attacks by Taitz on the Court's  
4 subject matter jurisdiction, has ruled that there is diversity of citizenship in this  
5 case, whether Liberi was a resident of Pennsylvania or New Mexico. [PRJN #1  
6 (Docket No. ["DN"]123, p. 3, n. 1); PRJN #5 (DN 160, p. 6).] This issue was  
7 also raised, and rejected, in Taitz's previous Anti-SLAPP Motion. [PRJN #9 (DN  
8 227).] Taitz has not presented any information showing lack of diversity that was  
9 not part of the Court's records at the time her previous motion was denied.

10 Liberi has filed declarations establishing that she is not a resident of  
11 California or Texas (or any state in which any defendant resides), and providing  
12 good cause for not showing her current driver's license to Taitz (who would likely  
13 publish Liberi's home address to her minions over the internet). [PRJN # 2 (DN  
14 146-7, ¶2); PRJN #5 (DN 186-3, ¶¶ 3, 11).] Liberi has shown her driver's license  
15 to Judge Robreno in camera, and is willing to do the same to this Court, but is  
16 unwilling to show the same to Taitz because of Taitz's well-documented past  
17 misuse of Liberi's and Ostella's personal information. [PRJN # 5 (DN 186-2,  
18 pgs. 12-17).]

19  
20 **B. Plaintiffs Have Stated Viable Claims Against Taitz.**

21 Taitz has asserted the equivalent of a Rule 12(b)(6) motion to each of the 11  
22 causes of action of the FAC. Dismissal under Rule 12(b)(6) is appropriate only  
23 where a claim lacks a cognizable legal theory or sufficient facts to support any  
24 cognizable legal theory. The nature of a cause of action does not depend on the  
25 label the plaintiff gives it or the relief the plaintiff seeks, but on the primary right  
26 involved. Bird, Marella, Boxer & Wolpert v. Superior Court, 106 Cal.App.4th  
27 419, 427, 130 Cal.Rptr.2d 782 (2003); Khodayari v. Mashburn, 200 Cal. App. 4th  
28 1184, 1190, 132 Cal. Rptr. 3d 903, 907 (2011).

1 For purposes of a motion to dismiss, the Plaintiffs' allegations are taken as  
2 true, and the Court must construe the allegations of the challenged pleading in the  
3 light most favorable to the Plaintiffs. Jenkins v. McKeithen, 395 U.S. 411, 421,  
4 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969). If the Court were inclined to grant a  
5 motion to dismiss as to any cause of action, leave to amend must be granted unless  
6 it is clear that the complaint's deficiencies cannot be cured by amendment. Lucas  
7 v. Department of Corrections, 66 F.3d 245, 248 (9<sup>th</sup> Cir., 1995).

8 **1. Plaintiffs Have Standing to Assert Claims for**  
9 **Invasion of Privacy.**

10 Taitz's first argument is that the Plaintiffs' claims for invasion of privacy  
11 must fail because the rights bestowed by the California Constitution are limited to  
12 California residents. This argument fails for a number of reasons, as discussed  
13 below.

14 First of all, the rights of privacy under Article 1, Section 1 of the  
15 Constitution are bestowed to "all persons", not just "all California citizens or  
16 residents". Article 1, Section 1, expressly provides:

17 "All people are by nature free and independent and have inalienable  
18 rights. Among these are enjoying and defending life and liberty,  
19 acquiring, possessing, and protecting property, and pursuing and  
20 obtaining safety, happiness, and privacy." [Emphasis supplied.]

21 By the very language of the Article 1, §1, the rights of privacy are applicable to  
22 "All people" who are subject to California jurisdiction. Citizens of other states,  
23 who come into California (in this case, as the result of a transfer from the Eastern  
24 District of Pennsylvania) are entitled to the benefits of the California Constitution.  
25 Interestingly, not one of the cases cited by Taitz involved a court denying the right  
26 of privacy embodied in the California Constitution to a non-Californians.

27 Secondly, even the cases cited by Taitz recognize the ability of California to  
28 govern or regulate conduct within the State of California that reaches or has

1 effects outside of the State. As was noted in Churchill Vill. L.L.C. v. Gen. Elec.  
2 Co., 169 F. Supp. 2d 1119, 1127 (N.D. Cal. 2000), cited by Taitz, Business &  
3 Professions Code Section 17500 prohibits false or misleading statements made  
4 “before the public in this state” and “**from this state before the public in any**  
5 **state.**” The allegations of the FAC clearly involve acts by Taitz, a California  
6 resident, conducted within the State of California with far reaching, extra-  
7 territorial effects.

8 Moreover, Taitz’s Rule 12(b)(6) motion must be denied if the Plaintiffs’  
9 allegations for invasion of privacy, set forth in the first four causes of action of the  
10 FAC, state a claim on any cognizable legal theory. See page 9, *supra*. Plaintiffs’  
11 invasion of privacy claims are not based solely on the California Constitution, but  
12 also on statutory law [Civil Code Section 1798.53] and common law.<sup>1</sup>

13 California Civil Code Section 1798.53 proscribes, and permits private rights  
14 of actions for, any violation occurring in the State of California, regardless of  
15 where the victim resides. Also, the tort of Invasion of Privacy is recognized under  
16 common law in California, and may be asserted against any person over whom  
17 courts in California have jurisdiction (subject only to California’s choice of law  
18 provisions). Diaz v. Oakland Tribune, Inc., 139 Cal. App. 3d 118, 125-26, 188  
19 Cal. Rptr. 762, 766-67 (1983) [“The concept of a common-law right to privacy  
20 was first developed in a landmark article by Warren and Brandeis, *The Right to*  
21 *Privacy* (1890) 4 Harv.L.Rev. 193, and has been adopted in virtually every  
22 state.”] Choice of law is not an issue because the tort is also recognized in  
23 Pennsylvania [Harris by Harris v. Easton Pub. Co., 335 Pa. Super. 141, 152, 483  
24 A.2d 1377, 1383 (1984)] and New Mexico. [McNutt v. New Mexico State  
25 Tribune Co., 88 N.M. 162, 165, 538 P.2d 804, 807 (Ct. App. 1975).]

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27  
28 <sup>1</sup> For this same reason, Taitz’s motion based on references in the First Amended  
Complaint to the First and Fourteenth Amendments to the U.S. Constitution must be denied,  
since Plaintiffs’ claims are not based exclusively on those provisions.

1 Accordingly, Taitz's motion to dismiss the first four causes of action on the  
2 ground of lack of standing must be denied.

3 **2. Plaintiffs' Claims are Not Barred by California's**  
4 **Litigation Privilege.**

5 Taitz's next argument is that the Plaintiffs' "invasion of privacy" claims are  
6 somehow barred by California's litigation privilege. It is typical of Taitz's  
7 inconsistency to argue, on the one hand, that California law does not apply  
8 because the Plaintiffs are not citizens of California, and then to argue that her  
9 conduct is protected by California law, notwithstanding the non-Californian status  
10 of Plaintiffs.<sup>2</sup>

11 As alleged in the FAC, Taitz's *modus operandi* is (a) to improperly obtain  
12 private information concerning the Plaintiffs, (b) gratuitously submit that  
13 information in a court document, and (c) republish copies of the court document  
14 on the internet, and repeat the information in media interviews, articles, and blogs.  
15 The harm to the Plaintiffs was caused, not by Taitz's filing documents with the  
16 Court, but from the republication of defamation and the Plaintiffs' private  
17 information to the public at large who are not participants in this action. Such  
18 republications are not protected by the Litigation Privilege of Civil Code Section  
19 47(b). Silberg v. Anderson, 50 Cal. 3d 205, 219, 786 P.2d 365 (1990) ["Finally,  
20 republications to nonparticipants in the action are generally not privileged under  
21 section 47(2), and are thus actionable unless privileged on some other basis."];  
22 Monex Deposit Co. v. Gilliam, 680 F. Supp. 2d 1148, 1164 (C.D. Cal. 2010); Fin.  
23 Corp. of Am. v. Wilburn, 189 Cal. App. 3d 764, 778, 234 Cal. Rptr. 653, 661  
24 (1987) ["we generally observe an attorney will not be protected by the absolute  
25 privilege as to actionable words spoken before persons in no way connected with  
26

---

27  
28 <sup>2</sup> Plaintiffs do not dispute that California Civil Code Section 47(b) is applicable to this  
action, but do dispute that Taitz's conduct which caused the Plaintiffs' damages was protected by  
Section 47(b).

1 the proceeding.”].

2 **C. Plaintiffs Claims Are Not Barred by the Communications**  
3 **Decency Act.**

4 Taitz, in a very broad brush, attacks the first 9 causes of action of the FAC  
5 as a “violation of the Communications Decency Act”, 47 USC §230(e)(3).

6 However, not only does Taitz mischaracterize the Plaintiffs’ first nine causes of  
7 action, the Communications Decency Act does not apply to Taitz because she was  
8 not an “internet provider” and thus not entitled to immunity under Section 230.

9 The structure and purpose of § 230(c)(1) indicate that the immunity applies  
10 only with regard to third-party information provided *for use on the Internet* or  
11 another interactive computer service. It does not provide protection for those who  
12 provide their own postings and content on the internet, or who do not operate or  
13 use interactive computer services. Batzel v. Smith, 333 F.3d 1018, 1033 (9th Cir.  
14 2003); Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521  
15 F.3d 1157, 1165 (9th Cir. 2008); Jones v. Dirty World Entm't Recordings, LLC,  
16 766 F. Supp. 2d 828, 836 (E.D. Ky. 2011). It does not protect Taitz from liability  
17 for her own postings and creations on the internet, or her posting of documents  
18 and data which she obtained from sources other than internet providers (including  
19 documents such as court filings she herself created and republished) - as opposed  
20 to simply creating a link to the information provider. As alleged in the FAC, Taitz  
21 did not merely recirculate as part of an interactive internet service information  
22 provided by other interactive internet service providers - she added her own  
23 material and content, and became a direct provider herself. She also published  
24 false data and personal data in e-mails, in media interviews, in personal, and in  
25 narrative blogs, none of which is entitled to immunity under the CDA.

26 As the Court held in Jones v. Dirty World Entm't Recordings, LLC, *id.*,  
27 citing Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, *id.*,  
28 the immunity afforded by the CDA is not absolute and may be forfeited if the site

owner invites the posting of illegal materials or makes actionable postings itself. Also, the protection is limited to those “users” who receive information in a capacity related to their own function as a provider or user of interactive computer services. As the Court held in Batzel v. Smith, *supra*, 333 F.3d at 1033:

“If information is provided to those individuals in a capacity unrelated to their function as a provider or user of interactive computer services, then there is no reason to protect them with the special statutory immunity.”

There is nothing in the FAC, nor has Taitz made any showing, that her receipt of private data concerning the Plaintiffs was received by her in her capacity as a provider or user of interactive computer services. The allegations of the FAC also clearly show that Taitz did not simply “republish” such information through an interactive computer services (the internet) but she also created and added her own content and context (for example, “Dossier #6”), embellished information, and put it out as part of her own content - making her a content provider not entitled to immunity under the CDA. Also, as alleged in the FAC, Taitz republished the information in non-protected forums, such as e-mail blasts, media interviews, and other publications. Accordingly, her motion based on the Communications Decency Act must be denied.

**D. Liberi’s Invasion of Privacy Claims Are Not Barred by Res Judicata or Collateral Estoppel.**

Taitz further argues that Liberi’s first 9 claims of the FAC are barred by res judicata or collateral estoppel, based on this Court’s having granted Lexis/Nexus’ motion for summary judgment. This argument is without merit.

First of all, Taitz’s dissemination of Liberi’s private data, as alleged in the FAC, is only a part of Liberi’s claims against Taitz. This argument does not



1 address Liberi's claims based on acts defamation, identity theft, malicious  
2 prosecution and abuse of process.

3 Secondly, the Court's ruling on the Lexis/Nexus summary judgment motion  
4 was based on a determination that Lexis/Nexus was not subject to the Fair Credit  
5 Reporting Act. The only issue raised in that ruling concerning Liberi's social  
6 security number, date of birth, and marriage history (and not, for example, her  
7 home address or other identifying information) was that the information provided  
8 to Taitz did not come from Lexis/Nexus. There was no finding that malicious  
9 nationwide dissemination of Liberi's private data by Taitz was inactionable  
10 because some of the data appeared (mandatorily) on court records.<sup>3</sup>

11 Liberi's harm was not caused by Taitz's obtaining Liberi's social security number  
12 - it was caused by Taitz's malicious widespread dissemination of that (and other)  
13 personal data. See Garden Grove Police Dep't v. Superior Court, 89 Cal. App. 4th  
14 430, 434, 107 Cal. Rptr. 2d 642, 644 (2001); Planned Parenthood Golden Gate v.  
15 Superior Court, 83 Cal. App. 4th 347, 360, 99 Cal. Rptr. 2d 627, 638 (2000); ACS  
16 Sys., Inc. v. St. Paul Fire & Marine Ins. Co., 147 Cal. App. 4th 137, 149, 53 Cal.  
17 Rptr. 3d 786, 795 (2007).

18  
19  
20 **E. Plaintiffs Have Stated Claims Under California Civil Code**  
**Sections 1798.53 and 1798.85.**

21 The Fifth and Sixth Causes of Action of the FAC are for, respectively,  
22 violations of California Civil Code Sections 1798.53 and 1798.85. Taitz's argues  
23 that these claims are insufficient because she did not obtain the Plaintiffs' records  
24 from a state agency, and that the Plaintiffs are not California residents. Her  
25 arguments are without merit.

26  
27 <sup>3</sup> The case cited by Taitz, Sheehan v. Gregoire, 272 F.Supp.2d 1135 (W.D. Wash. 2003)  
28 is not on point. That case involved the constitutionality a statute preemptively restraining the  
press from publishing publicly available information - it did not pertain to malicious  
dissemination of private information.

1 Section 1798.53 imposes civil liability for invasion of privacy on “Any  
2 person, other than an employee of the state or of a local government agency acting  
3 solely in his or her official capacity, who intentionally discloses information, not  
4 otherwise public, which they know or should reasonably know was obtained from  
5 personal information maintained by a state agency or from “records” within a  
6 “system of records” . . .” There is no statutory requirement that the person whose  
7 privacy was invaded must be a California resident if the acts of the defendant  
8 violated California law and the action is subject to jurisdiction in California. As  
9 alleged in Paragraphs 197 and 240-247, the allegations of the FAC clearly allege  
10 facts showing that Taitz violated this act.

11 Section 1798.85(a) expressly prohibits the public posting or displaying of  
12 an individual's social security number. As alleged in the FAC, Taitz publically  
13 posted and circulated Liberi's social security number to numerous recipients of  
14 Taitz's publications, in clear violation of Section 1798.85(a).

15 Plaintiffs' assertion of the Litigation Privilege, Civ. Code, §47(b), is  
16 unavailing. The gravamen of Plaintiffs' complaint is not the filing of Liberi's  
17 social security number with the Court, but the widespread publication of her social  
18 security number (and other personal data) to numerous persons not related to or  
19 participants in this action (or any action involving Liberi).

20 Regarding the requirement of California residency, the Court's ruling on the  
21 Lexus/Nexus summary judgment motion applied that requirement only to claims  
22 under Civil Code Section 1998.81. Plaintiffs have not made any such claim  
23 against Taitz.  
24

25 **F. Cyber-Stalking is a Recognized Tort.**

26 Taitz moves to strike Plaintiffs' Seventh Cause of Action on the ground that  
27 cyber-stalking is not a “legally-recognized tort.” Taitz cites no authority to  
28 support her argument. Nor does she dispute that the FAC alleges the elements of a



1 claim for stalking under Civil Code §1708.7(b). Indeed, Section 1708.7 (b)(2)  
2 expressly provides the “credible threat” element of a claim for stalking may  
3 be “communicated by means of an electronic communication device, or a threat  
4 implied by a pattern of conduct or a combination of verbal, written, or  
5 electronically communicated statements and conduct”.

6 **G. Plaintiffs Have Sufficiently Stated Claims for Defamation.**

7 Taitz’s objections to the Eighth Cause of Action of the FAC (for  
8 defamation) is based on three erroneous arguments: (a) by minimizing the scope  
9 and content of her defamatory comments, Taitz argues “truth” as a defense, (b)  
10 that corporate entities cannot be defamed, and (c) all Taitz spouted was “opinion”.

11 As set forth in the FAC, Taitz has repeatedly defamed Liberi by claiming  
12 that she is a “career criminal”, that she had current criminal charges pending  
13 against her, that she violated probation, that she was a convicted perjurer, that she  
14 murdered her sister, that she tampered with Taitz’s vehicles, that she had hundreds  
15 of felony counts against her, that she had a criminal record going back to the  
16 1990’s, that she obtained multiple illegal social security numbers, etc. [See, e.g.,  
17 FAC ¶285.] The hearsay evidence cited by Taitz (a single proceeding in 2001,  
18 resulting in a 26-day “time served” sentence and 3 years probation) is a far cry  
19 from the defamatory statements Taitz has made about Liberi.  
20

21 Nor has Taitz shown by admissible evidence the truth of her defamation of  
22 Berg and the other Plaintiffs, which go far beyond what Taitz attempts to  
23 characterize as “expressions of opinion”. (See FAC, ¶287.) Also, Taitz does not  
24 even address, in her motion, the defamation of Ostella. (FAC, ¶286.)

25 Finally, Taitz’s assertions that corporations cannot sue for defamation is,  
26 simply, wrong. Albertini v. Schaefer, 97 Cal. App. 3d 822, 830, 159 Cal. Rptr. 98,  
27 102 (Ct. App. 1979) [“Corporate reputation is also protected by Civil Code section  
28 46; corporations may sue or be sued for defamation.”].

1                   **H.     The Individual Plaintiffs Have Stated Claims for**  
2                   **Intentional Infliction of Emotional Distress.**

3           Taitz's claims that her conduct of numerous, widespread, malicious  
4   defamation, invasion of privacy, identity theft, stalking, and other acts she has  
5   done against Liberi, Ostella and Berg - outside of and independent of any court-  
6   related conduct - was not sufficiently outrageous so as to justify a claim for  
7   intentional infliction of emotional distress is ludicrous. Her conduct, as alleged in  
8   the FAC, was malicious and was specifically intended by her to inflict emotional  
9   distress. Moreover, her conduct was not privileged under Civil Code Section  
10   47(b) because it did not consist merely of court-related conduct or  
11   communications with persons participating in this litigation. [See page 11, *supra*.]

12           Plaintiffs acknowledge that the corporate plaintiffs do not have a claim for  
13   intentional infliction of emotional distress.

14  
15                   **I.     Liberi Has Stated Claims for Malicious Prosecution and**  
16                   **Abuse of Process.**

17           The 10<sup>th</sup> and 11<sup>th</sup> causes of action of the FAC are claims by Liberi for  
18   malicious prosecution and abuse of process, arising from Taitz's false,  
19   unsuccessful attempt to have Liberi's probation revoked.

20           Taitz's false reports to law enforcement officials in San Bernardino,  
21   California and in New Mexico are, essentially, false police reports which, under  
22   California law, can be the basis of a claim for malicious prosecution. Greene v.  
23   Bank of Am., B243638, 2013 WL 2130402 (Cal. Ct. App. May 16, 2013) ["As  
24   defendants concede, they may be liable for malicious prosecution if Casasola  
25   knowingly made a false report to the police."] Taitz' filing of an emergency  
26   motion in the San Bernardino Superior Court, likewise, was the initiation of a new  
27   legal proceeding. Unlike the situation before the court in *Adams v. Superior*  
28   *Court*, the case cited by Taitz, Taitz' petitions and the filing of an emergency

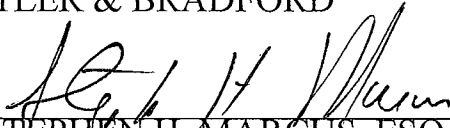
1 motion to have Liberi's probation revoked was not a motion to reconsider action  
2 already taken, but the initiation of a new action designed to result in the  
3 incarceration of Liberi. The denial of Taitz's motion and the dismissal of her  
4 petitions to law enforcement officials constitute the successful termination of  
5 those proceedings. [FAC ¶ 321.]

6  
7 **IV. CONCLUSION**

8 For the reasons set forth hereinabove, and in the matters of which Plaintiffs  
9 have requested this Court to take judicial notice, Plaintiffs respectfully submit that  
10 Taitz has not met her burden of showing that the acts which she is alleged, in the  
11 FAC, to have committed, constitute protected speech or petitioning activity under  
12 the California Anti-SLAPP statute, Code of Civil Procedure, Section 425.16, and  
13 that even if she had met that burden, the Plaintiffs have made the requisite prima  
14 facie showing of facts which, if proven, will sustain a judgment in their favor  
15 against Taitz. Accordingly, Taitz's Motion to Dismiss the Complaint must be  
16 denied.

17  
18  
19 Dated: May 31, 2013

LAW OFFICES OF PHILIP J. BERG  
GITTLER & BRADFORD

20  
21 by:   
22 STEPHEN H. MARCUS, ESQ.  
Attorneys for Plaintiffs

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Please take notice, that pursuant to the Federal Rules of Evidence 201, Plaintiffs ,respectfully request this Court to take judicial notice of the following Documents filed in this case in support of Plaintiffs Opposition to Defendant, Orly Taitz's ["Taitz"] Motion to Dismiss pursuant to the Anti-SLAPP Statute.

1. Docket number's ["DN"] 123: "Memorandum" dated 6/23/10.
2. DN 146 through 146-9: "Plaintiffs' Motion for the Court to Issue Order to Show Cause upon Defendant Orly Taitz Pursuant to Fed. R. Civ. P. 11, . . .", filed 10/7/2010;
3. DN 160: "Memorandum" filed 12/23/2010;
4. DN 178: "CCP 425.16 Anti-SLAPP Motion to Dismiss the Case as a Slapp Complaint." filed by Taitz on 4/25/2011;
5. DN 186 through 186-4: "Plaintiffs Response in Opposition to Defendants, Orly Taitz and Defend Our Freedoms Foundations, Inc. Anti-SLAPP Motion and Motion to Dismiss Pursuant To Fed. R. Civ. P. 12(b)(1) and 12(b)(6)", including the Declarations of Lisa Liberi and Philip J. Berg, filed 5/5/2011;
6. DN 190 through 190-47: Plaintiffs Supplemental to Their Motion for Leave to File a First Amended Complaint", and related documents and exhibits, filed 5/20/2011;
7. DN 213 through 213-5: "Declaration of Lisa Ostella", filed on 5/31/2011;
8. DN 214, Declaration of Philip J. Berg, Esq.", filed on 5/31/2011;
9. DN 227, This Court's Minute Order, filed on June 14, 2011;
10. DN 231, Plaintiffs First Amended Complaint ["FAC"], filed 6/17/2011;
11. DN 311 through 311-4, "Plaintiffs Response in Opposition to

1 Defendant, Orly Taitz's Motion to Dismiss Pursuant to *Fed. R. Civ. P.* 12(b)(1)  
2 and 12(b)(6)" and related documents, filed 7/25/2011;

3 12. DN 312: "Declaration of Plaintiff Lisa Ostella", filed 7/25/2011;

4 13. DN 313 "Declaration of Dr. Charles Edward Lincoln, III", filed  
5 7/25/2011; and

6 14. DN 314 through 314-13: "Declaration of Lisa Liberi" and related  
7 documents, filed 7/25/2011.

8  
9 Rule 201 authorizes a Court to take judicial notice of facts that are "not  
10 subject to reasonable dispute" and are "either (1) generally known with the  
11 territorial jurisdiction of the trial court or (2) capable of accurate and ready  
12 determination by resort to sources whose accuracy cannot reasonably be  
13 questioned." *Fed. R. Evid.* 201(b). Judicial Notice is "mandatory" if it is requested  
14 by a party and the Court is supplied with the necessary information." *Fed. R. Evid.*  
15 201(d).

16 The documents identified above are pertinent to Plaintiffs' claims against  
17 Orly Taitz and support Plaintiffs Opposition to Taitz's Anti-SLAPP Motion to  
18 Dismiss. The documents show that Taitz's actions against and towards Plaintiffs  
19 do not fall within the protections of the Anti-SLAPP Statute, *C.C.P.* 425.16; and  
20 show Plaintiffs' prima facie claims for which relief can be granted.  
21

22  
23 Dated: May 31, 2013

LAW OFFICES OF PHILIP J. BERG  
GITTLER & BRADFORD

24  
25 by: 

STEPHEN H. MARCUS, ESQ.

26 Attorneys for Plaintiffs  
27  
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